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N.J. BOARD OF DENTISTRY
ON 4-20-95 cm

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF:	:	Administrative Action
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	:	
NICHOLAS BREEN, D.M.D.	:	REINSTATEMENT ORDER
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This matter was opened to the New Jersey State Board of Dentistry (hereinafter "Board") upon the filing of an Application for Reinstatement of the License to practice dentistry in the State of New Jersey by Kevin Wm. Kelly, Esq., counsel for Nicholas Breen, D.M.D., such Application being supported by numerous documents attesting to the participation in a program of rehabilitation by Dr. Breen with respect to his personal use of drugs including, but not limited to, reports from Joseph Buccilli, Ph.D., CACD, Principal Counselor at Seabrook House, Phyllis Black, CSW, ACSW, Dr. Breen's treating therapist, and Dr. Frederick Rotgers of the N.J.D.A. Chemical Dependency Program (C.D.P.). The Board also considered the report of the psychological evaluation submitted by Mark Glat, Psy.D., the Board appointed consultant, concerning an examination conducted on December 30, 1994. Dr. Breen personally appeared before the Board with counsel on April 5, 1995, to request reinstatement of his license to practice dentistry. In addition, the Board considered evidence concerning a February 8, 1995 positive urine specimen of Dr. Breen's which tested positive for

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codeine and morphine and had been obtained and processed according to a forensic chain of custody. In response to this positive urine specimen, Dr. Breen represented that he had made a harmless mistake in that he had taken a cough medication identified as promethazine (brand name Phenergan) which had been prescribed for Kathleen Breen, his wife. Dr. Breen submitted documentation from his physician indicating that he had been under the physician's care for treatment of bilateral tonsillitis in early January 1995. He also submitted a copy of the prescription for Phenergan for Kathleen Breen dated February 11, 1995.

Pursuant to the Board Order entered on August 4, 1994, prior to the reinstatement of Dr. Breen's license to practice dentistry, Dr. Breen has the burden at this hearing of demonstrating to the Board that he is capable of discharging functions of a licensee in a manner that is consistent with the protection of the public's health, safety and welfare. Therefore, the Board at a minimum, required Dr. Breen to show evidence of attendance at AA/NA meetings at a frequency of no less than five (5) days per week and proof of clean urine samples provided twice a week during the period his license was suspended. In addition, the Board required Dr. Breen to submit to a psychological evaluation by a Board consultant prior to seeking reinstatement of licensure.

After diligent deliberations, the Board finds that Dr. Breen has met the minimum requirements set forth in the Board Order of August 4, 1994 and that he is now capable of discharging functions of a licensee in a manner consistent with the public's health, safety and welfare. The Board, however, with respect to the issue of the positive urine sampling of February 8, 1995 cautions Dr. Breen to carefully consider the requirements of the Board Order entered on August 4, 1994 and of

the within Order which state that Dr. Breen may not possess any controlled dangerous substance unless pursuant to a bona fide prescription written by a physician for good medical cause in his own treatment. Accordingly, the Board has determined to enter the Reinstatement Order as follows:

IT IS, THEREFORE, ON THIS 19th DAY OF April 1995,

ORDERED THAT:

1. The license of Nicholas Breen, D.M.D., to practice dentistry in the State of New Jersey shall be reinstated effective on the entry date of the within Reinstatement Order, expressly contingent upon continuing compliance with the following terms and conditions:

a. Dr. Breen may practice dentistry only as the employee of and under the direct supervision of a New Jersey licensed dentist. Dr. Breen shall inform the employing dentist of his prior drug addiction problem and shall advise the employer that he may not prescribe or dispense controlled dangerous substances. Dr. Breen shall provide to the Board the name and address of the employing dentist, and he shall cause the employing dentist to submit reports to the Board confirming that he or she has been advised of Dr. Breen's addiction problems and evaluating his competence and performance. These reports shall be submitted to the Board on a quarterly basis. Dr. Breen shall not be permitted to own or operate any dental facility.

b. Dr. Breen shall have his urine monitored under the supervision of the C.D.P. on a random, unannounced basis, two times per week in accordance with his present monitoring

program. The urine monitoring shall be conducted with direct witnessing of the taking of the samples either from a volunteer or drug clinic staff as arranged and designated by the C.D.P. The initial drug screen will utilize the EMIT technique and all confirming tests and/or secondary tests will be performed by gas chromatography/mass spectrometry (GC/MS). The testing procedure will include a forensic chain of custody protocol to ensure sample integrity and to provide documentation to withstand a legal challenge. The C.D.P. shall be responsible to assure that all urine samples are handled by a laboratory competent to provide these services. All test results shall be provided in the first instance directly to the C.D.P., and any positive result will be reported immediately by the Program to Agnes Clarke, Executive Director of the Board, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing. Any failure by Dr. Breen to submit or provide a urine sample within 24 hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event Dr. Breen is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Dr. Frederick Rotgers or Dr. Barbara McCrady

of the C.D.P. Neither the volunteer or drug clinic staff shall be authorized to consent to waive a urine test. The C.D.P. shall advise the Board of every instance where a request has been made to waive a urine test together with the Program's determination in each such case. In the event Dr. Breen will be out of state for any reason, the C.D.P. must be so advised and arrangements must be made for a urine test prior to the resumption of dental practice upon return to the State. The Board may, in its sole discretion, modify the frequency of testing or method of reporting during the monitoring period. Dr. Breen shall be responsible for all costs connected with the urine monitoring program.

c. Dr. Breen shall not prescribe controlled dangerous substances, nor shall he possess such substances, except pursuant to a bona fide prescription written by a physician for good medical cause in his own treatment. In addition, Dr. Breen shall advise any and all treating physicians and/or dentists of his history of substance abuse. He shall cause any physician or dentist who prescribes or dispenses a medication which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication and confirming that the practitioner was advised in advance of the history of substance abuse. Such report shall be provided to the Board no later than 7 days subsequent to the dispensing of the medication or the prescription in order

to avoid any confusion which may be caused by a confirmed positive urine test as a result of such mediation.

d. Dr. Breen shall attend support groups including AA/NA at a frequency of no less than three (3) times per week. Dr. Breen shall provide evidence of attendance at such groups directly to the C.D.P. on a form or in the manner as required by the Program. The C.D.P. shall advise the Board immediately in the event it receives information that Dr. Breen has discontinued attendance at any of the support groups.

e. Dr. Breen shall continue in counseling with Phyllis Black at a frequency of one time per two week period. Dr. Breen shall cause Phyllis Black to provide the Board with quarterly reports in regard to his attendance and progress in counselling.

f. Dr. Breen shall provide appropriate releases to any and all parties who are participating in the monitoring program as outlined herein as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner. With regard to the requirement for submission of quarterly reports to the Board, the beginning of the first quarter is deemed to commence on April 1, 1995.

2. All costs associated with the monitoring program as outlined herein shall be paid directly by Dr. Breen.

3. It is expressly understood and agreed that continued licensure with restrictions as ordered herein is contingent upon strict

compliance with all of the aforementioned conditions. Upon the Board's receipt of any information indicating that any term of the within Order has been violated in any manner whatsoever, including, but not limited to, a verbal report of a confirmed positive urine or any other evidence that Dr. Breen has used an addictive substance, a hearing shall be held on short notice before the Board or before one member of the Board authorized to act on its behalf. The proofs at such a hearing shall be limited to evidence of the particular violation at issue.

4. Dr. Breen may apply for modification of the terms and conditions of the within Order no sooner than one (1) year from the entry date herein. Prior to making application for modification, Dr. Breen shall submit to a supplemental psychological evaluation to be conducted by a Board appointed psychologist.

STATE BOARD OF DENTISTRY

By: Stephen Candio
Stephen Candio, D.D.S., President

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the within Order which state that Dr. Breen may not possess any controlled dangerous substance unless pursuant to a bona fide prescription written by a physician for good medical cause in his own treatment. Accordingly, the Board has determined to enter the Reinstatement Order as follows:

IT IS, THEREFORE, ON THIS 19th DAY OF April 1995,

ORDERED THAT:

1. The license of Nicholas Breen, D.M.D., to practice dentistry in the State of New Jersey shall be reinstated effective on the entry date of the within Reinstatement Order, expressly contingent upon continuing compliance with the following terms and conditions:

a. Dr. Breen may practice dentistry only as the employee of and under the direct supervision of a New Jersey licensed dentist. Dr. Breen shall inform the employing dentist of his prior drug addiction problem and shall advise the employer that he may not prescribe or dispense controlled dangerous substances. Dr. Breen shall provide to the Board the name and address of the employing dentist, and he shall cause the employing dentist to submit reports to the Board confirming that he or she has been advised of Dr. Breen's addiction problems and evaluating his competence and performance. These reports shall be submitted to the Board on a quarterly basis. Dr. Breen shall not be permitted to own or operate any dental facility.

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program. The urine monitoring shall be conducted with direct witnessing of the taking of the samples either from a volunteer or drug clinic staff as arranged and designated by the C.D.P. The initial drug screen will utilize the EMIT technique and all confirming tests and/or secondary tests will be performed by gas chromatography/mass spectrometry (GC/MS). The testing procedure will include a forensic chain of custody protocol to ensure sample integrity and to provide documentation to withstand a legal challenge. The C.D.P. shall be responsible to assure that all urine samples are handled by a laboratory competent to provide these services. All test results shall be provided in the first instance directly to the C.D.P., and any positive result will be reported immediately by the Program to Agnes Clarke, Executive Director of the Board, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing. Any failure by Dr. Breen to submit or provide a urine sample within 24 hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event Dr. Breen is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Dr. Frederick Rotgers or Dr. Barbara McCrady

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compliance with all of the aforementioned conditions. Upon the Board's receipt of any information indicating that any term of the within Order has been violated in any manner whatsoever, including, but not limited to, a verbal report of a confirmed positive urine or any other evidence that Dr. Breen has used an addictive substance, a hearing shall be held on short notice before the Board or before one member of the Board authorized to act on its behalf. The proofs at such a hearing shall be limited to evidence of the particular violation at issue.

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